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No. 02-819

IN THE

Supreme Court of the United States

ANDREW J. KONTRICK,

Petitioner,

v.

ROBERT A. RYAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF OF THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE* [1]

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 1,200 consumer bankruptcy attorneys nationwide. Member attorneys and their law firms represent debtors in an estimated 300,000 bankruptcy cases filed each year. NACBA is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

NACBA's corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. Additionally, NACBA advocates nationally on issues which cannot adequately be addressed by individual member attorneys. NACBA has filed *amicus curiae* briefs in various appellate courts seeking to protect the rights of consumer bankruptcy debtors, including briefs filed in this Court. *See, e.g.*, *Kawaauhau v. Geiger*, 118 S.Ct. 974 (1998).

The NACBA membership has a vital interest in the outcome of this appeal. NACBA members primarily represent individual low- and moderate-income wage-earners. Many of the bankruptcy cases filed by such wage-earners involve the discharge of unsecured consumer obligations such as credit card debt. Too often in these cases, card companies and other lenders have threatened to file or have filed non-dischargeability actions based on the slimmest evidence of actual fraud by the debtor, or in situations where the requisite elements of fraud cannot be proved. Such actions may be threatened or filed simply to coerce a settlement because debtors may not

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[1] All parties to this case have consented to the filing of this brief, and letters indicating consent have been submitted contemporaneously. No counsel for any party authored this brief in whole or in part, and no person or entity other than *amicus curiae*, their counsel, or their members made a monetary contribution to the preparation of this brief.

have the financial wherewithal to incur the litigation costs needed to defend in the action. *See, e.g., In re Grayson*, 199 B.R. 397 (Bankr. W.D.Mo. 1996).

The issue before this Court involving application of the time deadlines for the filing of discharge and non-dischargeability actions is critical to individual debtors who wish to obtain a fresh start. *Amicus* is particularly concerned that affirmance of the opinion below will substantially undermine the calculated efforts made by Congress and the Bankruptcy Rules Advisory Committee to curtail the filing of spurious discharge actions intended simply to coerce settlements.

SUMMARY OF ARGUMENT

The Bankruptcy Code and the accompanying Federal Rules of Bankruptcy Procedure carefully balance the competing interests of the various parties in the bankruptcy process. In order for the affected parties in the bankruptcy process to be afforded finality, and for there to be efficient administration of the more than 1.5 million bankruptcy cases currently filed per year, the Code and Rules establish precise time deadlines for the taking of certain actions. With regard to some of these actions, the Rules are explicit that the deadlines are absolute. A permissive construction of the Rules that would tolerate late filings and requests for extensions based on equitable tolling doctrines will unnecessarily burden the bankruptcy court system and upset this balancing of interests.

For debtors, the Code and Rules provide that once the statutory and procedural requirements have been satisfied, the debtor shall promptly be granted a discharge of debts. This discharge is the critical element of the debtor's fresh start, mainly because of the finality that the Code and Rules ascribe to it. This finality permits the debtor to make informed decisions upon emerging from bankruptcy and reentering into

the financial marketplace. Similarly, former creditors of the debtor obtain certainty as to the treatment of their claims and new creditors are permitted to rely upon the finality of the debtor's discharge in striking new bargains with the debtor.

The Code and Rules are also intended to work in tandem to curb certain creditor abuses that existed in the pre-Code era. Prior to enactment of the Code, the fresh start goals of the bankruptcy discharge were often frustrated by creditor attempts to assert long after the bankruptcy was concluded that a debt was not discharged in the debtor's bankruptcy. These efforts typically involved suits brought in non-bankruptcy forums alleging that the debt was obtained by fraud or a false financial statement, and often resulted in debtors waiving their discharge. Congress sought to close the door on frivolous non-dischargeability actions brought to coerce settlements by providing in § 523(c) that all such actions must be brought in the bankruptcy court during the pendency of the case. The playing field was further leveled by the adoption of a comprehensive set of procedural rules that requires creditors to bring such actions within a specified time period or automatically lose the right to pursue the action. *Amicus* is concerned that a permissive construction of these carefully crafted rules by this Court will breathe new life into this practice Congress sought to eliminate.

While these policy considerations are of paramount importance, ultimately the issue in this case may be resolved by a simple parsing of the language in the Rules in question. The plain language of the Rules makes clear that a discharge objection action must be filed by a specified deadline, and that the bankruptcy court may not exercise discretion to extend the deadline based on equitable tolling doctrines. Moreover, this Court in *Taylor v. Freeland & Kronz* refused to afford a permissive construction to a set of bankruptcy rules almost identical to those at issue here. Thus,

the language of the statute and this Court's decision in *Taylor* compel reversal of the decision below.

ARGUMENT

I. THE PLAIN LANGUAGE OF THE BANKRUPTCY RULES MANDATES THAT A DISCHARGE SHALL BE GRANTED IN FAVOR OF THE DEBTOR UNLESS A TIMELY OBJECTION IS RAISED.

A. This Court's Inquiry Need Go No Further Than An Examination Of The Text Of Bankruptcy Rules 4004, 4007 And 9006.

The court below failed to find the "definitive answer" in the language of Bankruptcy Rules 4004(a) and 4007(c) because the question it sought to answer was whether the time limitations in the rules are "jurisdictional in nature." *Ryan v. Kontrick*, 295 F.3d 724, 730 (7th Cir. 2002). Decisions of this Court involving application of numerous procedural court rules make clear that the court below need not have probed for such a fundamental jurisdictional element. Rather, the Rules in question here concern simply the relevant time limitations for the filing of discharge and dischargeability objection actions in bankruptcy. The only relevant question presented in this case is whether the plain words of the Rules permit extensions of the time deadlines for reasons not expressly provided for in those Rules. *See Carlisle v. United States*, 517 U.S. 416, 434, 116 S.Ct. 1460, 1470, 134 L.Ed.2d 613 (1996) (Ginsburg, J. concurring) ("It is anomalous to classify time prescriptions, even rigid ones, under the heading 'subject matter jurisdiction.'").

On this point, the Rules could not be more explicit. Both Rules 4004(a) and 4007(c) unequivocally

state that a complaint objecting to a debtor's discharge or the discharge of a particular debt under § 523(c) of the Bankruptcy Code must be filed within 60 days of the date first set for the meeting of creditors. Significantly, both Rules 4004(b) and 4007(c) delineate the limited circumstances in which the time deadline may be extended; the court may for cause extend the deadline only if the party seeking the extension files a motion before the time deadline expires. No other exceptions are provided for in the Rules.

Though Rules 4004(a), 4004(b) and 4007(c) are clear enough on their own, any possibility that further grounds may be asserted for extension of the 60-day time deadline is foreclosed by Bankruptcy Rule 9006(b)(3). This Rule states that the strict time deadline in Rules 4004(a) and 4007(c) may be enlarged "only to the extent and under the conditions stated in those rules."

Read together, these provisions create a scheme for determining objections to dischargeability that is coherent, uncomplicated and clear. In order to challenge a debtor's right to a discharge or the discharge of a particular debt, a trustee or creditor must object within 60 days of the date set for the meeting of creditors or seek additional time to object within that period. The failure of any party to pursue an objection or to seek an extension of time within the statutory period means that the debtor has met the statutory conditions for entitlement to discharge and that the court shall "forthwith grant the discharge." Fed. R. Bankr. P. 4004(c).

In engaging in its jurisdictional analysis of the Rules in question, the court below ignored this Court's admonition that the starting point in all cases of statutory construction must be the language of the statute itself. *Toibb v. Radloff*, 501 U.S. 157, 111 S.Ct. 2197, 115 L.Ed.2d 145 (1991); *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552, 110 S.Ct. 2126, 2130, 109 L.Ed.2d 588 (1990); *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 109 S.Ct. 1026, 1030, 103 L.Ed.2d 290 (1989); *United*

States v. Steele, 147 F.3d 1316, 1318 (11th Cir.1998) (*en banc*) ("In construing a statute we must begin, and often should end as well, with the language of the statute itself.") (*quoting Merritt v. Dillard*, 120 F.3d 1181, 1185 (11th Cir.1997)). The plain meaning of the statute should be "conclusive, except in the rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intention of the drafters." *Ron Pair*, 109 S.Ct. at 1031 (*quoting Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571, 102 S.Ct. 3245, 3250 (1982)).

This Court has stated a similar mandate in requiring adherence to the plain language of properly promulgated court rules. Courts have no authority to tamper with the plain language of Rules of Court, including limitations periods. *Schiavone v. Fortune*, 477 U.S. 21, 106 S.Ct. 2379, 91 L.Ed.2d 18 (1986).[2]

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[2] In his concurring opinion in *Torres v. Oakland Scavenger Co.*, Justice Scalia stated the following principles in construing the application of a rule of procedure that is applicable here:

> By definition all rules of procedure are technicalities; sanctions for failure to comply with them always prevents the court from deciding where justice lies in the particular case, on the theory that securing a fair and orderly process enables more justice to be done in the totality of cases. It seems to me moreover, that we should seek to interpret the rules neither liberally or stingily, but only, as best we can, according to their apparent intent. Where the intent is to provide leeway, a permissive construction is the right one; where it is to be strict, a permissive construction is wrong.

Torres v. Oakland Scavenger Co., 487 U.S. 312, 319, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988).

B. This Court's Opinion In *Taylor v. Freeland & Kronz* Compels Reversal Of The Decision Below.

The bankruptcy rules in question here are functionally identical to the bankruptcy rules this Court had occasion to construe in *Taylor v. Freeland & Kronz*, 503 U.S. 638, 112 S.Ct. 1644, 118 L.Ed.2d 280 (1992). In an unambiguous opinion, based on the plain language of comparable Rule 4003(b), this Court held that the strict time deadline established for the filing of objections to exemptions was absolute. This opinion in *Taylor* left no room in its analysis for the application of equitable considerations that might excuse an out-of-time objection filing such as waiver, fraudulent concealment or excusable neglect. Quite simply, this Court held that there can be no judicial review of the underlying basis for the debtor's claim of exemption if the time deadline passes without the filing of an objection or a request for extension.

Given the stark similarities in the text and purpose between Rule 4003(b) in *Taylor* and Rules 4004(a), 4004(b) and 4007(c) in this case, the courts below should not have excused the Respondent's late-filed count to his discharge objection complaint on the basis of the Petitioner's apparent waiver of the deadline requirement. As one leading treatise on bankruptcy law has observed about the application of *Taylor* on Rules 4004(a) and 4004(b): "In *Taylor v. Freeland & Kronz*, the Supreme Court made clear that deadlines in the federal Rules of bankruptcy procedure mean what they say and that violations of such deadlines cannot be ignored or excused." *Collier on Bankruptcy*, ¶ 4004.02[3] at p. 4004-6 (15th ed. rev.).

While *Taylor* alone compels reversal of the decision below, other decisions of this Court have upheld and enforced provisions of similar court rules in situations where the consequences of denying relief to untimely parties were harsher than in the proceeding here. For example, in *Carlisle v. United States*, 517 U.S. 416,

116 S.Ct. 1460, 134 L.Ed.2d 613 (1996), equitable considerations such as excusable neglect were not permitted to save a motion for judgment of acquittal filed one day late by a criminal defendant based on the plain language of Fed. R. Crim. P. 29(c). Similarly, in *United States v. Robinson*, 361 U.S. 220, 80 S.Ct. 282, 4 L.Ed.2d 259 (1960), indigent criminal defendants were denied their right of appeal for their failure to timely file a notice of appeal based on the plain language of Fed. R. Crim. P. 45(b). And in *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 108 S.Ct. 2405, 101 L.Ed. 2d 285 (1988), the plain language of Fed. R. App. P. 26(b) was applied to cut off an appeal by a party not named in a notice of appeal.

What unifies all of these opinions is that the rules under consideration in each set forth conditions in which a court may properly extend the time for the relevant action to be taken. *E.g.*, Fed. R. Crim. P. 29(c) ("a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period."). Moreover, the cases all involved an additional procedural rule, such as Bankruptcy Rule 9006(b), that prohibits a court from enlarging time periods for certain actions.[3] In each case, this Court held that there can be no deviation from the strict time deadlines expressed in the rules. This case presents no

[3] Bankruptcy Rule 9006(b) is patterned after Fed. R. Civ. P. 6(b) and Fed. R. App. P. 26(b). *See* Fed. R. Bankr. P. 9006, Advisory Committee Note; *In re Hill*, 811 F.2d 484, 487 (9th Cir. 1987). Another analogous rule is Fed R. Crim. P. 45(b), which provides that while excusable neglect may relieve a party from the consequences of certain untimely actions, "the court may not extend the time for taking any action under [certain specified Rules] . . . except to the extent and under the conditions stated in [those Rules]."

sound justification for a departure from this well-established precedent.[4]

In its opinion, the court below failed to consider this precedent and did not appreciate the striking similarities between this case and *Taylor*, as reflected by the court's blithe dismissal of *Taylor* in a footnote. *Kontrick*, 295 F.3d at 733-34, n.4. The court below also reached the untenable conclusion, stated in the negative, that *Taylor* did not hold that "Rule 4003(b) was not subject to the usual equitable doctrines that apply to other deadlines and statutes of limitations." *Id.* This view of *Taylor* completely ignores the factual setting in which the case was presented as the Trustee in *Taylor* clearly sought to interpose equitable tolling considerations based on the debtor's alleged lack of good faith in claiming the exemption. If there be any doubt that the *Taylor* holding was intended to cut off the use of such equitable doctrines, the dissent in *Taylor* made clear its concern that the majority opinion denies to courts the discretion to extend applicable time deadlines based on equitable tolling principles such as "fraudulent concealment or undiscovered fraud." *Taylor*, 503 U.S. at 647-48.

C. The Rules In Question Do Not Permit Extensions Of The Time Deadlines Beyond Those Explicitly Provided For In The Rules Themselves.

The court below made much of what it characterized as the "flexibility" of Rules 4004(b) and 4007(c) in permitting extensions of the filing deadlines. From this, the court extrapolates an intention in the rules to permit other forms of tolling considerations, including equitable doctrines such as waiver. However, the

[4] It is worth noting that this Court in *Taylor* and *Carlisle* reached decisions without seeking to determine whether the rules in question were jurisdictional. The term "jurisdictional" is simply not used in the majority opinions.

plain language of these Rules, and their counterparts in other federal rules of procedure, does not evince the leniency or lack of rigidity suggested by the court below. On the contrary, by mandating that requests for extensions of time be filed within the 60-day period, the absolute nature of the time deadline is retained.[5]

Rule 4004(b) explicitly states that extension of the deadline can be granted only if a party in interest files a motion before the deadline expires and only if the court determines at a hearing that cause exists for extending the deadline. Where a rule or statute sets out well-defined conditions and a procedure for seeking an extension of time, it must be read to exclude other exceptions not otherwise provided for. *See, e.g., U.S. v. Brockamp*, 519 U.S. 347, 352, 117 S.Ct. 849, 136 L.Ed.2d 818 (1997) ("[A tax refund statute's] detail, its technical language, the iteration of the limitations in both procedural and substantive forms, and the explicit listing of exceptions, taken together, indicate to us that Congress did not intend courts to read other unmentioned, open-ended, "equitable" exceptions into the statute that it wrote."). As the court in *In re Leet* stated:

> Where the exceptions are specified, it would seem anomalous to allow the contamination of the system by legal concepts foreign to it. If the drafters of the rules had intended the exception urged by the Creditors, it should logically appear in the rules.

In re Leet, 274 B.R. 695, 700 (B.A.P. 6th Cir. 2002).

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[5] It may be noted that a similar provision for requesting an extension of the filing deadline found in Bankruptcy Rule 4003(b) did not persuade this Court in *Taylor* that the Rule contemplates other tolling factors.

This Court's opinion in *U.S. v. Beggerly*, 524 U.S. 38, 118 S.Ct. 1862, 141 L.Ed.2d 32 (1998), further undermines the rationale of the lower court on this point by finding that any flexibility in a statute of limitations should not be read as opening the door to additional tolling exceptions not listed in the statute itseif. In *Beggerly*, this Court found that the statute in question relating to the filing of quite title actions against the government "already effectively allowed for equitable tolling" by providing that the limitations period does not begin to run until the plaintiff "knew or should have known of the claim of the United States." In refusing to permit equitable tolling that is "inconsistent with the text of the relevant statute," this Court held that any additional equitable tolling beyond that provided for in the statute would be "unwarranted." *Beggerly*, 524 U.S. at 48-49.

II. POLICY CONSIDERATIONS IN THIS CASE DO NOT FAVOR A PERMISSIVE CONSTRUCTION OF THE DISCHARGE OBJECTION RULES.

The principal goal of most bankruptcy cases is the entry of a discharge, a purpose that is consistent with the policy of providing debtors with an opportunity for a fresh start. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). In enacting the Code, Congress was concerned that once a debtor completes a bankruptcy case, he or she should obtain the benefit of a "fresh start." *See, e.g.*, H.R. Rep. No. 595, 95th Cong., 1st Sess. 117 (1977) (fresh start is the "essence of modern bankruptcy law"); H.R. Rep. No. 595, 95th Cong., 1st Sess. 125 (1977) ("purpose of straight bankruptcy . . . is to obtain a fresh start"). This Court has frequently echoed the same concern under both the former Act and the Code:

> This Court has certainly acknowledged that a central purpose of the Code is to

> provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy "a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S.Ct. 695, 699, 78 L.Ed. 1230 (1934).

Grogan v. Garner, 110 U.S. 1945, 111 S.Ct. 654, 659, 109 L.Ed.2d 308 (1991).

The availability of a discharge, however, is not absolute as there are certain limited categories of debts that may be excepted from discharge under § 523(a), and the debtor may be completely denied a discharge under § 727.

A well-established doctrine in bankruptcy consistent with the law's fresh start goal is that exceptions to discharge should be narrowly construed. *Kawaauhau v. Geiger*, 523 U.S. 57, 118 S. Ct. 974, 140 L. Ed. 2d 90 (1998); *Gleason v. Thaw*, 236 U.S. 558, 562 (1915) ("In view of the well-known purposes of the bankrupt law, exceptions to the operation of a discharge thereunder should be confined to those plainly expressed. . . ."). This doctrine should apply with equal force to rules intended to implement the Code's dischargeability exception provisions.

If the applicable Rules in this case are strictly construed and enforced without exception, the significant policy goal of finality in the bankruptcy process will be furthered, which is a critical element of a debtor's fresh start. *Taylor*, 503 U.S. at 644 ("Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality."); *In re Harrison*, 71 B.R. 457, 459 (Bankr.D.Minn.1987) (["The 60-day limitation period] is designed to further the 'fresh start' goals of bankruptcy relief; it requires creditors to promptly join their exceptions to discharge of debt and objections to discharge, so a petitioning

debtor will enjoy finality and certainty in relief from financial distress as quickly as possible."); *In re Klein*, 64 B.R. 372, 375 (Bankr.E.D.N.Y. 1986) (The Rules reflect the "notion that bankruptcy in the life of an individual is a passing phenomenon, after which life must go on. The viability and rapidity of that process is the essence of the discharge in bankruptcy and related fresh start doctrine.").

Amicus is concerned that this important goal of finality be achieved particularly in regard to nondischargeability actions brought under § 523(c). The Bankruptcy Code makes an important distinction between two categories of exceptions to discharge; those debts that are excepted from discharge regardless of whether the issue is raised during the bankruptcy and those that are excluded from the discharge only if nondischargeability is raised and determined during the bankruptcy. 11 U.S.C. § 523(c). Among other effects, the 60-day time deadline in Bankruptcy Rule 4007(c) permits the debtor to know exactly where he or she stands in regard to potential creditor actions before the bankruptcy is concluded and to determine with certainty the scope of the discharge granted.

The Advisory Committee note to Rule 4007(c) expresses a similar sentiment:

> Subdivision (c) differs from sub-division (b) by imposing a deadline for filing complaints to determine the issue of dischargeability of debts set out in § 523(a)(2), (4) or (6) of the Code. The bankruptcy court has exclusive jurisdiction to determine dischargeability of these debts. If a complaint is not

timely filed, the debt is discharged. See § 523(c).[6]

The benefits of finality in the bankruptcy process are not limited to debtors. As the debtor begins the process of financial rehabilitation after bankruptcy, the finality of the discharge permits new creditors to make informed decisions on future dealings with the debtor. Certainly, such creditors should be entitled to rely upon the debtor's discharge and should not need to fear that any new bargain with the debtor may be at risk because of an untimely attack on the debtor's discharge or the dischargeability of a particular debt.

Moreover, the finality contemplated by enforcement of the time limits in these Rules is crucial to the efficient administration of the bankruptcy court system. Strict enforcement of the time deadlines currently has the deterrent effect of virtually eliminating late-filed discharge objections. A permissive rule construction will almost certainly result in a substantial increase in the number of adversary proceedings filed in which bankruptcy courts will be called upon to exercise discretion in extending the objection deadlines on grounds such as excusable neglect, waiver, reliance, fraudulent concealment and other equitable tolling arguments. Hearings on such matters are by nature extremely fact intensive. Given the vast increase in the number of bankruptcy filings since the bankruptcy rules were initially drafted[7], relaxation of the current rules will no doubt exert undue pressure on an already burdened bankruptcy court system.

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[6] Advisory Committee Notes to procedural rules can serve to guide the interpretation of those rules. *In re Kearney*, 105 B.R. 260, 264, n.4 (Bankr.E.D.Pa. 1989).

[7] Based on data provided by the Administrative Office of the Courts, the number of total bankruptcy filings has increased from approximately 331,000 filings in 1980 to approximately 1.5 million in 2002.

The concern of consumer debtors in this case, however, is not limited simply to the uncertainty and lack of finality that a permissive construction of the rules would foster. Low and moderate-income debtors have reason to be even more apprehensive of a rule construction that would encourage the filing of untimely dischargeability actions. Unlike the parties in this action, typical consumer debtors do not have the financial means to engage in protracted litigation over dischargeability claims.[8] As such, they are particularly vulnerable to creditor attempts to settle threatened or filed dischargeablity actions so as to avoid litigation costs, even when the actions are groundless either in terms of the merits of the equitable tolling argument or the underlying claim. *See, e.g., In re Grayson*, 199 B.R. 397 (Bankr.W.D.Mo. 1996). A creditor who has not been diligent in meeting the 60-day filing deadline, but who appreciates the economics of the situation, will not be deterred from threatening suit, knowing that the debtor will likely pay $500 as a nuisance settlement rather than face $3,000 in litigation costs to defend the claim on the merits.

Of course, the consequences of this kind of practice are even more severe in the case of an unrepresented debtor. Because a consumer bankruptcy debtor's relationship with his or her lawyer typically ends when the bankruptcy case is concluded, it is very likely that most debtors who

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[8] In a recent study of some 4,000 no-asset Chapter 7 cases filed in 84 districts during 1999-2000, the authors concluded not surprisingly that the "typical chapter 7 debtor has a relatively low income and relatively high unsecured debts, mostly credit card debt." The study found that the average gross income for surveyed debtors was $27,324, and the average net income was $21,444. *See "Bankruptcy by the Numbers: Lifestyles of the Rich and Bankrupt,"* Ed Flynn and Gordon Bermant, American Bankruptcy Institute Journal, September, 2000.

would face untimely dischargeability challenges would be unrepresented.[9]

Strict enforcement of Bankruptcy Rules 4007(c) and 9006(b)(3) will discourage the filing of spurious dischargeability actions and effectuate the policy supporting § 523(c). As the court in *In re Kirsch* has stated:

> The result is automatic and sometimes leads to harsh results. However, Congress intended to establish a system whereby certain types of nondischargeability claims would be automatically cut off after a relatively short period of limitations in order to prevent debtors from being harassed by creditors after their claims had been discharged in bankruptcy. Congress meant to cure the abuse whereby debtors were routinely sued by creditors long after bankruptcy creditors [*sic*] claiming that their claims were not discharged because of fraud or a false financial statement. *See* Countryman, "The New Dischargeability Law", 45 Am. Bankr.L.J. 1 (1971). This policy underlies § 523(c) of the Bankruptcy Code.

In re Kirsch, 65 B.R. 297, 299 (Bankr.N.D.Ill. 1986); *see also In re Rowland*, 275 B.R. 209 (Bankr.E.D.Pa. 2002).[10]

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[9] The decision below adds further complications for unrepresented debtors who are unfamiliar with the Rule deadlines and are likely to waive their application. Even if such debtors subsequently retain counsel to represent them in such proceedings, their prior waiver while unrepresented will preclude them from asserting the timeliness defense if the decision below is affirmed.

[10] A similar policy goal is evident in other provisions of the statute, most notably § 523(d) which permits the award of attorneys fees to the debtor if the creditor's position in a nondischargeability action is not substantially justified. *See In re Shurbier*, 134 B.R. 922, 927 (Bankr.W.D.Mo. 1991)("The section was enacted to prevent a creditor from bringing dischargeability actions in order to coerce a settlement from an honest debtor anxious to avoid large attorney fees."), *citing* H.R. Rep. No. 595, 95 Cong., 1st Sess., 131 (1977), U.S. Code Cong. & Admin. News, 1978, p. 5787. *See also* S.Rep. No. 989, 95th Cong.2d Sess. 80 (1978), 1978 U.S.Code Cong. & Admin. News, p. 5866.

Finally, reversal of the decision below is also supported by the overall objectives of the Federal Rules of Bankruptcy Procedure as expressed in Rule 1001. This Rule states that "[t]hese rules shall be construed to secure the just, speedy and inexpensive determination of every case and proceeding." Citing this Court's opinion in *Katchen v. Landy*, 382 U.S. 323, 328, 86 S.Ct. 467, 472, 15 L.Ed. 2d 391 (1966), the Advisory Committee note goes on to state that "[t]he objective of 'expeditious and economical administration' of cases under the Code has frequently been recognized by the courts to be 'a chief purpose of the bankruptcy laws.'"[11]

To this end, strict enforcement of the provisions of Rules 4004(a), 4007(c) 9006(b)(3) is necessary to ensure the "prompt administration of bankruptcy cases." *See* Advisory Committee Note to Fed. R. Bankr. F. 9006(b)(3). This Court reached a similar conclusion in *Carlisle* when considering the affect of an analogous general procedural rule, Fed. R. Crim. P. 2.[12] This Court stated in *Carlisle* that:

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[11] This Court stated in *Katchen* that the "chief purpose of the bankruptcy laws is 'to secure a prompt and effectual administration of the estate of all bankrupts within a limited period.'" *Katchen v. Landy*, 382 U.S. 323, 328-329, 86 S.Ct. 467, 472, 15 L. Ed. 2d 391 (1966) *quoting Ex Parte Christy*, 3 How. 292, 312, 11 L.Ed. 603.

[12] Fed. R. Crim. P. 2 provides that the rules of criminal procedure "be construed to secure simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay."

> We see neither simplicity, nor fairness, nor elimination of delay in a regime that makes it discretionary whether an untimely motion for judgment of acquittal will be entertained.

Carlisle v. United States, supra, 517 U.S. at 431.

CONCLUSION

For all the foregoing reasons, this Court should reverse the decision below of the Seventh Circuit.

Respectfully submitted,

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